commercial/industrial purpose. It was after this that appellant asked respondent for final account claiming that respondent had agreed to settle the matter if he could get approval for sub-lot 4. It is for appellant to prove at the proper time and place that joint venture and partnership have not been discharged or rescinded despite the agreement to the division of property.

One of the principal objects of the Torrens system of land registration and conveyancing is to ensure certainty of title to land and registrable interests in land. The Sarawak Land Code is based on the Torrens system. Section 132 protects the title of a registered proprietor by making it indefeasible except in cases of fraud, forgery or illegality. However, a *bona fide* purchaser for value can, even in such cases, deal safely with the registered proprietor and will acquire from him an indefeasible registered title.

Section 173 permits the entry of a caveat by any person who claims to be entitled to or beneficially interested in the land. Until the caveat is removed the registered proprietor cannot dispose of his land. Our system of private caveats is a substitution for the equitable doctrine of notice in the English land law. As Lord Diplock said in *Eng Mee Yong & Ors.* v. *V. Letchumanan*[5]: —

"This is a very grave curtailment of the rights of the proprietor, yet it can be imposed at the instance of anyone who makes a claim to title to the land, however baseless that claim may turn out to be."

A little later he compared a caveat with a statutory injunction in these words: —

"The caveat under the Torrens system has often been likened to a statutory injunction of an interlocutory nature restraining the caveatee from dealing with the land pending the determination by the court of the caveator's claim to title to the land, in an ordinary action brought by the caveator against the caveatee for that purpose."

He pointed out: —

"... that this issue of a caveat differs from the grant of an interlocutory injunction in that it is issued *ex parte* by the Registrar acting in an administrative capacity without the intervention of the court and is wholly unsupported by any evidence at all. Unless there were some speedy procedure open to the registered proprietor to get the caveat set aside in cases where the caveator's claim is baseless or frivolous or vexatious, the Torrens system of land registration and conveyancing, so far from giving certainty to title to land in Malaya, would leave the registered proprietor in a more precarious position as respects his powers of disposition of his land than an unregistered proprietor under English law."

Although Lord Diplock was dealing with the National Land Code what he said applies equally to the Sarawak Land Code.

The learned judge was, in my view, justified in refusing stay as the caveator was more interested in getting monetary payment after learning that the caveatee managed to get approval for sub-lot 4 for commercial/industrial purposes. Moreover, they had agreed to the division of the lots between them. Whether the caveator has a share in sub-lot 4 is not a matter to be decided on affidavits. This will have to be thrashed out at the hearing of the suit which was only initiated after the caveat was ordered to be removed.

The allegation made by the caveator does not show a relationship of vendor and purchaser. It is not a case of the vendor refusing to complete a contract for sale of the land. Here, the caveatee was interested to dispose of the land to a developer. But, the caveator wanted to prevent such disposal unless he could get some money. I cannot see how the caveatee would be willing to sell the land below market value. If the caveator can establish the continuance of the joint venture and partnership he will get his money. He has not satisfied the learned judge of his claim to an interest in property. Even if he has so satisfied the learned judge he has not shown on the balance of convenience it would be better to maintain the *status quo* until trial of the suit for declaration that he is entitled to a half share in the land. On the hearing of the application there seemed to be conflicting evidence. The learned judge very properly did not try to attempt to resolve the conflict of evidence on affidavits. Unless it has been shown that the learned judge has exercised his discretion wrongly under section 177 of the Land Code, an appellate court would be slow to interfere since in dealing with this matter opinions of individual judges may reasonably differ. I can see no reason to interfere with the exercise of the discretion by the learned judge in refusing stay. I would dismiss the application with costs.

Application dismissed.

Solicitors: *Ee & Lim; Chan, Jugah, Wan Ullok & Co.*

NG CHEE KEONG v. NG TEONG KIAT HIGHLANDS PLANTATIONS LIMITED

[O.C.J. (Mohamed Azmi J.) January 4, 1979]
[Kuala Lumpur — Originating Motion No. 96 of 1977]

Company Law — Oppression by majority shareholders — Affairs of company conducted in oppressive manner — Neglect of tea plantation — Application by minority shareholders for sale of plantation — Companies Act (Act 125), s. 181(1).

In this case the facts showed that the directors of the company had neglected the tea plantation belonging to the company and, because of failure to pay the quit rent, there was the danger of the land being forfeited to the State. The minority shareholders applied under section 181(1)(a) of the Companies Act and obtained an order that the respondent-company do accept a written offer for the purchase of the tea estate in the event of the respondent-company failing to enter into the written sale and purchase agreement, the Senior Assistant Registrar be authorised to enter into such agreement on behalf of the respondent-company. The respondent-company thereupon applied that the order be set aside and that the notice of motion be struck off.

Held: (1) in view of the indifferent attitude of the Board of Directors and the company in allowing the tea plantation to deteriorate from a profitable concern to one of near insolvency, together with their conduct in allowing the tea plantation to be in arrears of quit rent to such an extent that the land has almost forfeited to the State, it was clearly established that the affairs of the company were being conducted in an oppressive manner;

(2) the applicants' application came within the ambit of section 181(1)(a) of the Companies Act and having regard to the wide powers given to the court under section 181(1)(b) the orders made were fair and reasonable having regard to the circumstances of the case;

(3) the application under section 181 was rightly made by motion under Order 52 of the Rules of the Supreme Court.

Cases referred to:-

(1) *Co-operative Wholesale Society Ltd.* v. *Meyer & Anor.* [1958] 3 All E.R. 66, 69.

(2) *Re Kong Thai Sawmill (Miri) Sdn. Bhd., Ling Beng Sung* v. *Kong Thai Sawmill (Miri) Sdn. Bhd. & Ors.* [1976] 1 M.L.J. 59.

ORIGINATING NOTICE OF MOTION.

Miss C.H. Liew for the applicant.

V.C. George for the respondent.

Cur. Adv. Vult.

Mohamed Azmi J.: By Summons-in-Chambers dated November 1, 1977, the respondent applied for an order that the order of court dated October 11, 1977 in favour of the applicant be set aside. A further application was made by the respondent, also by summons-in-chambers dated November 4, 1977 for an order that the notice of motion filed by the applicant under which the order of court dated October 11, 1977 was granted, be struck off. Both summons-in-chambers were dealt with together on the same day, and they were dismissed with costs. Against the said order, the respondent has now appealed.

The notice of motion filed by the applicant on September 14, 1977 was served on the respondent by A.R. Registered letter at the registered office of the respondent and it was duly acknowledged on September 27. (See affidavit of Richard Tan Ewe Kooi sworn on October 10, 1977 — enclosure 6). When the motion came up for hearing on October 11, 1977, the respondent was absent. Order-in-terms of the notice of motion was accordingly granted by the court in the absence of the respondent. The order, which was made pursuant to section 181(1)(a) of the Companies Act (Act 125), *inter alia*, provides that the respondent do forthwith accept the written offer of Dato Brijkishore dated July 11, 1977 to purchase the respondent's tea estate, and that in the event of the respondent failing to enter into a written sale and purchase agreement with the said Dato Brijkishore within ten days from the service of the court order, the Senior Assistant Registrar be authorised to enter into such sale and purchase agreement on behalf of the respondent.

The circumstances leading to the filing of the notice of motion is fully set out in the two affidavits of the applicant, Ng Chee Keong, sworn on August 18 and November 17, 1977 respectively, and also in the affidavit of Ng Kong Guan, the secretary of respondent company, sworn on November 18, 1977. The applicant is a minority shareholder in the respondent company. He owns 1,000 out of the 35,400 paid-up shares of the company. From the applicant's affidavits, I am satisfied that it is in the best interests of all shareholders of the respondent company that its tea estate at Ringlet, Cameron Highlands, be sold to Dato Brijkishore at a price of $1.6 million. The written offer of the Dato would expire after 12.00 noon on October 19, 1977 as contained in his affidavit sworn on September 28, 1977. From the applicant's affidavits, I am satisfied that the respondent company has ceased to be a going concern since about June 1974, and the tea estate was abandoned by the company and allowed to deteriorate from being a well-kept estate into an unattended property that is in danger of becoming mere scrub land. Quit rents totalling $57,112.04 was not paid by the company in respect of certain parts of the land since 1971 and in respect of the rest since 1972. The Collector of Land Revenue, Cameron Highlands, served on the company four notices each dated May 9, 1977, pursuant to section 97(1) of the National Land Code, under which terms the Leases, Nos. 801, 808, 810 and 521 for Lots 182, 172, 197 and 25 respectively, would be forfeited to the State Government, unless the arrears of quit rent were paid and settled within three months of the said notices. The company ignored the said notices. The said lands were, however, saved from forfeiture when the arrears of quit rent were settled two days before the land would have been forfeited, through the effort of the applicant and Ng Kong Guan in their capacities as two of the four joint executors of the estate of Ng Teong Kiat — one of the shareholders of the respondent company. In my view, the order to accept the offer of Dato Brijkishore would also be consistent with the resolution passed by the respondent company at its Extraordinary General Meeting on April 19, 1977, to the effect that two of the Directors, viz. Ng Chee Seng and Ng Kong Guan, be authorised to sell the tea estate at a reserved price of $1.6 million — which is the price offered by Dato Brijkishore. In the circumstances, it is in the best interest of all the shareholders that the order be made in terms of the applicant's notice of motion. In my view, the conduct of the Board of Directors in turning down the offer of $1.6 million is oppressive towards the applicant as a minority shareholder, in the light of the indifferent attitude of the company towards the tea plantation.

In the first summons-in-chambers filed by the respondent, the two affidavits in support of the application to set aside the court order, do not disclose any *bona fide* defence. The fact that the tea estate has been neglected is admitted, and the allegation that the lands would have been forfeited on July 8, 1977 through the neglect of the company to settle quit rents since 1971 is also not denied. The fact that it was the applicant and Ng Kong Guan who saved the lands from being forfeited is also not denied. It is also admitted that the company did pass a resolution at an Extraordinary General Meeting authorising Ng Kong Guan and Ng Chee Seng to sell the tea estate at a reserved price of $1.6 million. The only conceivable defence disclosed is that the lands could be sold at a better price than that offered by Dato Brijkishore. By paragraph 8 of Ng Chee Seng's affidavit, it is averred that there is an offer to buy the land at $1,500 per acre. Similar averment is made by Ng Chee Yong in his affidavit. The letter marked "NCY-6" written by Messrs. Mah Kok & Din, dated July 13, 1977 is supposed to be the evidence of such an offer from a purchaser. Yet there is no evidence before the court who is the intended purchaser. For some unknown reason, the name of the intended purchaser cannot be disclosed. The affidavits were sworn in October 1977. But it is inconceivable that even at the hearing in 1978, counsel for the respondent is still not in a position to inform the court who is the mysterious would-be purchaser. The reasonable infe-

rence to be drawn from the evidence is that there has never in fact been any actual offer by anyone to buy the tea estate at a better price than $1.6 million. The objection by Ng Chee Seng, Ng Chee Yong and the company to sell the property at the reserved price of $1.6 million is, therefore, unreasonable and not justified, and their belief that the property can fetch a better price than the reserved price is also unfounded. The application to set aside the court order must, therefore, be dismissed as the respondent has disclosed no good defence.

In the second summons-in-chambers, it is averred in the affidavit of Ng Chee Yong sworn on November 4, 1977, that applicant's notice of motion be struck off on technical grounds. It is also averred that the applicant has failed to prove that there has been any oppression by the company or that the powers exercised by the directors have been oppressive to him. He also avers that the Extraordinary General Meeting held on April 19, 1977 was invalid and as such the resolution passed to sell the property at a reserved price of $1.6 million is null and void.

In my view, the indifferent conduct of the Board of Directors and the company in allowing the tea plantation to deteriorate from a profitable concern to one of near insolvency, together with their conduct in allowing the tea plantation land to be in arrears of quit rent to such an extent that the land was almost forfeited to the State Government clearly establish that the affairs of the company are being conducted in an oppressive manner. The company having decided to sell the property at a reserved price of $1.6 million, also acted oppressively not only against the applicant but also against all minority shareholders by not accepting the good and reasonable offer of Dato Brijkishore to purchase the property at $1.6 million on the false pretext that there is a better price offered for the said property. From the evidence before me, the Board of Directors have done practically nothing to save the tea plantation or to secure better price than $1.6 million for the property. In the words of the applicant as contained in paragraph 17 of his second affidavit sworn on November 17, 1977, it is strange that Ng Chee Yong (and, if I may add, also the other members of the Board of Directors) were prepared to sit back and allow the lands of the tea plantation to be forfeited for non-payment of quit rents, but object to the sale of the said tea plantation at $1.6 million, the price at which the company had decided to sell at its Extraordinary General Meeting on June 5, 1976 and again on April 19, 1977. The affidavit of Ng Kong Guan, the secretary of the respondent company, also supports the two affidavits filed by the applicant. In my judgment, the applicant's application comes within the ambit of section 181(1)(a) of the Companies Act; and having regard to the wide powers given to the court under section 181(1)(b), which includes the power to make an order for the winding-up of the company, I think the orders granted by the court on October 11, 1977 are fair and reasonable having regard to the circumstances of this case. As stated by Viscount Simonds in Scottish *Co-operative Wholesale Society, Ltd.* v. *Meyer & Anor.*,[1] "It is, however, necessary, if section 210 is to be successfully invoked, to show not only that there has been oppression of the minority shareholders of a company but also that it has been the affairs of the company which have been conducted in an oppressive manner...". The provisions of section 210 of the 1948 English Act are similar, albeit narrower, to our section 181. In the present case, both conditions have been proved to my satisfaction, even if the narrower provisions of the English section were to be applied.

On technical grounds, it is the contention of counsel for the respondent that for the remedies sought, the matter should be commenced by writ of summons and not by way of notice of motion under Order 52 of the Rules of the Supreme Court. It is contended that all procedures under Companies Act are governed by Order 53B. Whilst section 210 of the English Companies Act specifically provides that an application should be by way of petition, our section 181 appears to be silent as to the procedures to be adopted. In my view, Order 53B of the Rules of the Supreme Court deals with specific matters under Companies Act, but it does not make any provision for application under section 181 of the said Act. In the absence of any specific procedure laid down by Order 53B, I am of the opinion that an application under section 181 can be made by motion under Order 52. In *Re Kong Thai Sawmill (Miri) Sdn. Bhd.; Ling Beng Sung* v. *Kong Thai Sawmill (Miri) Sdn. Bhd. & Ors.*,[2] an application under section 181 was also made by way of motion. In the circumstances, the respondent's objection on the ground that the applicant has adopted the wrong procedure must fail.

The third ground advanced in the respondent's second summons-in-chambers, viz. that the Extraordinary General Meeting held on April 19, 1977 was invalid and thereby annulling the resolution passed to sell the property, has no merit at all. In fact, counsel for the respondent did not address the court on this point. The application to strike off the notice of motion must necessarily fail.

For the above reasons, both summons-in-chambers of the respondent are dismissed with costs.

Order accordingly.

Solicitors: *C.H. Liew & Co.; Ng Ek Teong & Partners.*